



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/157721

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 19, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a telephonic hearing was held on September 16, 2014. The record was held open for the submittal of post-hearing documents, which were received.

The issue for determination is whether the IRIS agency correctly denied petitioner's request for a computer and related equipment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Carrie Haugen

IRIS

1 S. Pinckney Street  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County and has been enrolled in the IRIS program since approximately April 10, 2011.

2. On April 10, 2014 the IRIS agency issued a Notice of Action to petitioner denying her request for a computer and related equipment.

### DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

As part of an individual's enrollment in IRIS, an ISSP is developed to have a plan for using waiver services to meet individual outcomes, assessed needs and health and safety needs. See 42 CFR §441.450(c). The federal code requires that if an agency is to provide the IRIS home and community-based services it must provide those services under a written plan of care which is subject to approval by the Medicaid agency. See 42 CFR §441.301(b)(1)(i). IRIS funds can only be used within an approved ISSP and budget, and only for services, supports or goods that meet the definitions of those services within the Waiver application.

Petitioner's ISSP has identified 4 goals/outcomes: (1) Control over transportation. I do things that are important to me. "It is very soothing for me to spend time in nature. It helps me to bring balance and perspective to my life whether I am by myself or am sharing it with other people"; (2) Health and safety. I make decisions re: my supports and services. "I need to eat well as I believe that excellent nutrition is a key to improving and maintaining my health."; (3) Health and Safety. I have the best possible health. "My health is my first priority as it is the key to being able to function successfully in all areas of my life. I need to do the things that will improve and then maintain my health."; (4) Having a place of one's own: I feel safe. "It is very important to me that my home be a refuge where I feel safe and at peace." Exhibit 2.

In this case petitioner has requested that IRIS fund a computer and related equipment. The agency reviewed the request against its policy, "IRIS Funding for Goods, Supports and Services". See Exhibit 3. The policy states that Customized Goods or Services, which the computer and related equipment are considered, refers to a good that enhances the participant's opportunities to achieve outcomes related to living arrangement, relationship, community inclusion, work and functional or medical status. Further, each good selected must meet *each* of the following four criteria:

1.
  - a. The item or service is designed to meet the participant's functional, vocational or medical or social needs and also advances the desired outcomes in his/her Individual Service Plan;
  - b. The service, support or good is documented on the Individual Service Plan;
  - c. The service, support or good is not prohibited by Federal and State statutes and regulations, including the State's Procurement Code;
  - d. The service, support or good is not available through another source or experimental in nature.

AND [at least one of the following criteria]:

2.
  - a. The service, support or good will maintain or increase the participant's safety in the home or community environment;
  - b. The service, support or good will decrease or prevent increased dependence on other Medicaid-funded services;

- c. The service, support or good will maintain or increase the participant's functioning related to the disability;
- d. The service, support or good will maintain or increase the participant's access to or presence in the community.

*Id.*

The petitioner agreed at hearing that she does not have vocational or educational goals on her ISSP, but hopes to have some once her medical status improves. She testified that she would like the computer so that she can more fully participate in IRIS via chat groups, emails and submitting check requests, and to take part in breast cancer support groups, prayer groups, and animal rescue/support/placement networks. She requests speech recognition software for the computer as well because of her difficulty in typing. Her testimony is that other than medical appointments, she is essentially homebound.

The problem with this request is that petitioner has stated that she would like to get some type of employment, but that she is not pursuing that goal until she feels more medically stable. As explained above, a Customized Good or Service may be allowable when it is assessed and shows that it advances a desired outcome. Until such time as the petitioner identifies employment as a goal for her ISSP, no Customized Good or Service would be allowable for that purpose.

The same is true for the stated purpose of being a part of online support groups. Petitioner has not yet identified community inclusion as a goal for her ISSP so that the agency may assess that. Rather, the ISSP she has agreed to shows that she has a goal to spend time in nature. If petitioner's goals/outcomes have changed, those should be identified specifically so that IRIS can evaluate those goals and attempt to decide what services could accommodate them.

As to her participation in IRIS, while it might be convenient to have a computer to access IRIS materials or chat groups, it is not necessary for participation in the program.

In sum, I do not find that the request for a computer and related equipment has been shown to meet the petitioner's functional, vocational, medical or social needs or that it also advances the desired outcomes in her ISSP, which is required under the Customized Good and Services policy. Accordingly, I find that the agency correctly denied this request.

If petitioner identifies new goals for her ISSP she can request the computer and related equipment again if they relate to the goals. The agency would then need to assess the request, including identifying whether it would be a cost effective measure, given petitioner's testimony about the assistance she would need to get to and function at a library, along with the adaptive software request. I would also suggest, given the tenor of the testimony at hearing, that the parties clearly document all requests, conversations and agreements going forward.

This decision is not meant to diminish the challenges petitioner faces, but rather to explain that the funding for such requests must meet established regulations and guidelines. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

**CONCLUSIONS OF LAW**

The IRIS agency correctly denied petitioner's request for a computer and related equipment as a Customized Good or Service.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

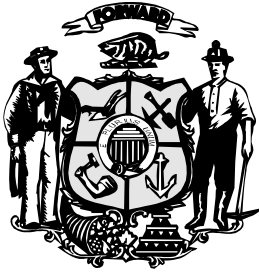
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400. The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 28th day of October, 2014

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 28, 2014.

Bureau of Long-Term Support